

DISTRICT COURT, WATER DIVISION 2 STATE OF COLORADO PUEBLO COUNTY JUDICIAL BUILDING 320 WEST 10 <sup>TH</sup> STREET PUEBLO, CO 81003	<b>EFILED Document – District Court</b> <b>2010CW57</b> <b>CO Pueblo County District Court 10th JD</b> <b>Filing Date: Dec 1 2010 10:42AM MST</b> <b>Filing ID: 34613597</b> <b>Review Clerk: N/A</b>  <div style="text-align: center;"><b>COURT USE ONLY</b></div>
<b>Concerning the Application for Water Rights of:</b>  COLORADO WATER CONSERVATION BOARD, IN MIDDLE CREEK, A NATURAL STREAM, IN THE UPPER ARKANSAS WATERSHED,  IN CUSTER & PUEBLO COUNTIES, COLORADO	
	Case No. : 10CW57  Div. 2
<b>FINDINGS AND RULING OF REFEREE AND DECREE OF THE WATER COURT</b>	

This matter comes before the Court by Application of the Colorado Water Conservation Board (“CWCB”). The Court, having considered all matters raised by the Application, and being fully advised in the premises, does hereby make the following Findings of Fact, Conclusions of Law, Ruling of the Referee, Judgment and Decree:

#### FINDINGS OF FACT

1.     Name of Applicant:                   Colorado Water Conservation Board  
  
Address of Applicant:                   1313 Sherman Street, Suite 721  
  Denver, CO 80203  
  (303) 866-3441
  
2.     Application: CWCB filed an Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree on August 25, 2010. A corrected Application for Water Rights to Preserve the Natural Environment to a Reasonable Degree was filed on August 27, 2010.
  
3.     Notice and Jurisdiction: All notices of this matter required by law have been fulfilled and the Court has jurisdiction over the Application and all parties affected thereby, whether or not they have chosen to appear.
  
4.     Objectors: No Statements of Opposition were filed and the time for filing additional Statements of Opposition has expired.
  
5.     Consultation: The Division Engineer filed a Summary of Consultation pursuant to § 37-92-302(4), C.R.S. (2010), dated October 14, 2010, and the Referee has given it due consideration.

6. Name of natural stream: Middle Creek, tributary to North Creek, tributary to the North Fork of the St. Charles River, tributary to the St. Charles River, tributary to the Arkansas River
7. Location:
  - a. The natural stream segment through which an instream flow is claimed: The natural stream channel from the confluence with Ophir Creek at latitude 38° 03' 55.58"N and longitude 105° 06' 20.10"W as the upstream terminus and extending to the Beulah Water Works Diversion at latitude 38° 04' 57.82"N and longitude 105° 00' 57.46"W as the downstream terminus, being a distance of approximately 6.72 miles. This segment can be located on the St. Charles Peak U.S.G.S. quadrangle.
  - b. For administrative purposes only:

Upper Terminus =  
NE NE S9 T23S R69W 6<sup>th</sup> PM  
1305' West of the East Section Line; 1223' South of the North Section Line  
UTM North: 4213080.9 UTM East: 490738.2

Lower Terminus =  
NE NE S5 T23S R68W 6<sup>th</sup> PM  
716' West of the East Section Line; 762' South of the North Section Line  
UTM North: 4214993.9 UTM East: 498600.3
8. Use of the water: Instream flow to preserve the natural environment to a reasonable degree.
9. Date of appropriation: The water was first applied to the above beneficial use on or before January 26, 2010. The appropriation was completed on January 26, 2010 by the action of the Colorado Water Conservation Board under the provisions of C.R.S. §§ 37-92-102(3) and 37-92-103(3), (4) and (10).
10. Amount of water claimed (ABSOLUTE): Instream flow of 5.1 cfs (April 1 – August 31) and 2.8 cfs (September 1 – March 31).

### **CONCLUSIONS OF LAW**

11. Notice and Jurisdiction. The Water Court for Division 2 has jurisdiction over the subject matter of these proceedings and over all persons, owners of property and water rights that may be affected hereby, whether or not they have chosen to appear. The Application in this matter and the resume publication of the Application placed such persons on notice of the relief requested by the Application and granted by this decree. C.R.S. §§ 37-92-203 and 302.
12. The CWCB has fulfilled all legal requirements for a decree for water rights including C.R.S. §§ 37-92-302, 304 and 305.
13. Burden of Proof. The CWCB has complied with all requirements and has met its burden of proof to adjudicate the water rights required in the Application, and is therefore entitled to a decree approving the requested water rights.

## JUDGMENT AND DECREE

14. The foregoing Findings of Fact and Conclusions of Law are hereby approved and incorporated as the Judgment and Decree of the Court by this reference.

15. The application is granted and a decree (ABSOLUTE) in the amount 5.1 cfs (April 1 – August 31) and 2.8 cfs (September 1 – March 31) is hereby entered to preserve the natural environment to a reasonable degree in the reach of Middle Creek between the upstream and downstream terminus points described in paragraph 7 above. The appropriation date for this water right is January 26, 2010.

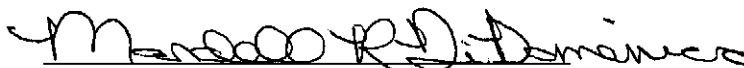
16. The priority herein awarded was filed in the water court in the year of 2010 and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical date of appropriation and not affected by the date of entry of ruling. The Applicant shall install and maintain such measuring devices and keep such records as the Division Engineer may require for administration of this right.

It is accordingly **ORDERED** that this Ruling shall be filed with the water clerk subject to judicial review.

It is further **ORDERED** that a copy of this Ruling shall be filed with the Division Engineer and the State Engineer.

Dated this 3rd day of November, 2010.

BY THE REFEREE

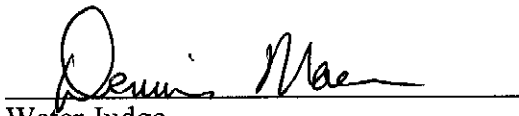


Water Referee  
Water Division No. 2  
State of Colorado

No protest was filed in this matter. The foregoing Ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated this 1 day of December, 2010.

BY THE COURT



Water Judge  
Water Division No. 2  
State of Colorado